

COMMISSIONERS APPROVAL

ROKOSCH 

GRANDSTAFF 

THOMPSON 

CHILCOTT

DRISCOLL 

PLETTENBERG (Clerk & Recorder)

Date.....July 2, 2007

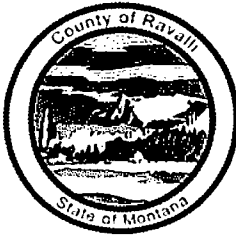
Members Present.....Commissioner Jim Rokosch,
Commissioner Carlotta Grandstaff, Commissioner Alan Thompson, Commissioner Greg
Chilcott and Commissioner Kathleen Driscoll

Minutes: Beth Farwell

The Board met for a Request for Commission Action for Moiese Meadow Subdivision. Deputy County Attorney Alex Beal, Planner Shaun Morrell, Senior Planner Renee Van Hoven, Planning Director Karen Hughes, Environmental Health Director Lee Jordan, Sanitarian Morgan Farrell, the developer and developer's consultant and numerous members of the community were present.

Commissioner Rokosch called the meeting to order. He gave a brief history of the time line stating the original application was submitted on November 25, 2005. Revisions had been completed on October 6, 2006 and then presented to the Planning Board on October, 18, 2006. The meeting was continued until November 1, 2006 and brought forth to the Board of County Commissioners on January 18, 2007 for public hearing. With the passing of the interim zoning initiative, there was a lawsuit filed. The settlement agreement was enacted and a new time line was established. The time line requirement for final decision for this subdivision is July 9, 2007.

Commissioner Rokosch requested the staff report be read. Shaun Morrell presented the staff report as follows:



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MEMORANDUM

DATE: NOVEMBER 1, 2006
TO: PLANNING BOARD
FROM: SHAUN MORRELL, PLANNER
RE: AMENDMENT TO THE MOIESE MEADOWS STAFF REPORT
CC: SUBDIVISION FILE/OUTGOING CORRESPONDENCE FILE – OG-06-11-1203

FOLLOWING THE INITIAL PUBLICATION OF THE STAFF REPORT ON OCTOBER 27, 2006, THE PLANNING DEPARTMENT RECEIVED THE FOLLOWING CORRESPONDENCES:

- EXHIBIT A-8: LETTER DATED OCTOBER 26, 2006, FROM THE MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION (DNRC) RECOMMENDING THAT A COMMUNITY WATER SYSTEM BE INSTALLED FOR THIS SUBDIVISION
- EXHIBIT A-9: E-MAIL CORRESPONDENCE DATED OCTOBER 30, 2006, BETWEEN THE RAVALLI COUNTY ENVIRONMENTAL HEALTH DEPARTMENT (RCEH) AND LANDWORKS DISCUSSING WASTEWATER TREATMENT ISSUES
- EXHIBIT A-10: E-MAIL CORRESPONDENCE DATED OCTOBER 30, 2006, BETWEEN RCEH AND THE PLANNING DEPARTMENT DISCUSSING WASTEWATER TREATMENT ISSUES
- EXHIBIT B-2: LETTER DATED OCTOBER 30, 2006, FROM FRONTIER LOG HOMES EXPRESSING CONCERN ABOUT PUBLIC HEALTH AND SAFETY WITH RESPECT TO THE IRRIGATION INFRASTRUCTURE NEAR THE PROPOSED SUBDIVISION
- EXHIBIT B-3: LETTER DATED OCTOBER 30, 2006, SIGNED BY 24 NEARBY LANDOWNERS EXPRESSING VARIOUS CONCERNS ABOUT THE PROPOSED SUBDIVISION

COMMENTS RECEIVED FROM RCEH AND DNRC, RECOMMENDING MORE STRINGENT STANDARDS FOR WATER AND WASTEWATER FACILITIES FOR A PARTICULAR SUBDIVISION, RAISE A RELATIVELY NEW ISSUE FOR SUBDIVISION REVIEW IN RAVALLI COUNTY. THE CONCERNS THAT HAVE BEEN RAISED ARE GENERAL IN NATURE AND NOT SUPPORTED BY SPECIFIC EVIDENCE. PLANNING STAFF CAUTIONS AGAINST IMPOSING REGULATIONS OR CONDITIONS THAT ARE MORE STRINGENT THAN STATE STANDARDS FOR WATER AND WASTEWATER TREATMENT IN THE ABSENCE OF SCIENTIFIC STUDIES JUSTIFYING THE MORE STRINGENT STANDARDS.

SECTION 76-3-504(g)(iii), MCA, STATES THAT SUBDIVISION REGULATIONS MUST PRESCRIBE WATER AND SEWER STANDARDS, BUT IT ALSO SPECIFIES THAT THESE REGULATIONS SHALL BE NO MORE STRINGENT THAN STATE REGULATIONS OR GUIDELINES, EXCEPT AS STATED IN SECTION 76-3-511, MCA. IF A LOCAL GOVERNMENT WANTS TO ADOPT MORE STRINGENT WATER AND SEWER REGULATIONS AS PART OF THEIR SUBDIVISION REGULATIONS, SECTION 76-3-511, MCA, REQUIRES LOCAL GOVERNMENT TO ADOPT SPECIFIC FINDINGS SUPPORTING THE REGULATIONS THAT REFERENCE INFORMATION AND "PEER-REVIEWED SCIENTIFIC STUDIES" CONTAINED IN THE RECORD THAT FORMS THE BASIS FOR THE GOVERNING BODY'S CONCLUSION.

ALTHOUGH REQUIRING A MITIGATING CONDITION REGARDING WATER AND SEWER ON A SUBDIVISION THAT IS MORE STRINGENT THAN STATE STANDARDS IS NOT SPECIFICALLY ADDRESSED, GIVEN THAT WE ARE NOT TO ADOPT REGULATIONS WITHOUT MEETING THE STRINGENCY REQUIREMENT, WE SHOULD ALSO NOT IMPOSE MITIGATING CONDITIONS ON SUBDIVISIONS WITHOUT MEETING THAT REQUIREMENT EITHER.

STAFF HAS REMOVED CONDITION 15 AND AMENDED APPLICABLE FINDINGS OF FACT AS FOLLOWS (CHANGES TO THE STAFF REPORT NOTED IN UNDERLINE/~~STRIKEOUT~~):

RECOMMENDED MITIGATING CONDITIONS OF APPROVAL FOR THE SUBDIVISION
~~15. All lots shall be required to have Level 2 wastewater treatment systems, as defined by the Montana Department of Environmental Quality, ARM 17.30.702(11).~~

Criterion 3: Effects on Local Services

FINDINGS OF FACT:

21. THE MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION (DNRC) STATED IN A LETTER DATED OCTOBER 26, 2006, THAT THE SUBDIVISION MEETS THE MINIMUM REQUIREMENTS OF LAW, BUT RECOMMENDED THAT A COMMUNITY WATER SYSTEM BE INSTALLED (EXHIBIT A-8).

22. SECTION 76-3-504(g)(iii), MCA, PROHIBITS LOCAL GOVERNMENTS FROM ESTABLISHING WATER SUPPLY REGULATIONS THAT ARE MORE STRINGENT THAN STATE STANDARDS, UNLESS THE MORE STRINGENT LOCAL REGULATIONS MEET THE CRITERIA DESCRIBED IN SECTION 76-3-511, INCLUDING PEER-REVIEWED SCIENTIFIC STUDIES. BECAUSE NO SCIENTIFIC STUDIES EXIST TO PROVE THAT MORE STRINGENT WATER SUPPLY REQUIREMENTS ARE JUSTIFIED, NO ADDITIONAL MITIGATION CAN BE REQUIRED.

Criterion 4: Effects on the Natural Environment

FINDINGS OF FACT:

2. The U.S. Fish and Wildlife Service (USFWS) submitted comments expressing concern over this subdivision's use of individual septic treatment and the impacts this may have due to the property's proximity to the Lee Metcalf Wildlife Refuge (Exhibit A-1). The Ravalli County Environmental Health Department has indicated that the subdivision meets the minimum standards required by law, but recommended that the lots be required to have Level 2 septic wastewater treatment due to the subdivision's proximity to the Refuge (Exhibits A-7, A-9, A-10). ~~To mitigate impacts on the natural environment, Condition 15 shall address the concerns of USFWS and EHD.~~

[Renumber findings 3 through 6 as 4 through 7 and insert the following:]

3. Section 76-3-504(g)(iii), MCA, prohibits local governments from establishing wastewater regulations that are more stringent than State standards, unless the

more stringent local regulations meet the criteria described in Section 76-3-511, including peer-reviewed scientific studies. Because no scientific studies exist to prove that more stringent wastewater requirements are justified in this area, no additional mitigation can be required.

- 8. THE MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION (DNRC) STATED IN A LETTER DATED OCTOBER 26, 2006, THAT THE SUBDIVISION MEETS THE MINIMUM REQUIREMENTS OF LAW, BUT RECOMMENDED THAT A COMMUNITY WATER SYSTEM BE INSTALLED (EXHIBIT A-8).**
- 9. SECTION 76-3-504(G)(III), MCA, PROHIBITS LOCAL GOVERNMENTS FROM ESTABLISHING WATER SUPPLY REGULATIONS THAT ARE MORE STRINGENT THAN STATE STANDARDS, UNLESS THE MORE STRINGENT LOCAL REGULATIONS MEET THE CRITERIA DESCRIBED IN SECTION 76-3-511, INCLUDING PEER-REVIEWED SCIENTIFIC STUDIES. BECAUSE NO SCIENTIFIC STUDIES EXIST TO PROVE THAT MORE STRINGENT WATER SUPPLY REQUIREMENTS ARE JUSTIFIED, NO ADDITIONAL MITIGATION CAN BE REQUIRED.**

Criterion 5: Effects on Wildlife and Wildlife Habitat

FINDINGS OF FACT:

3. The U.S. Fish and Wildlife Service (USFWS) submitted comments expressing concern over this subdivision's use of individual septic treatment and the impacts this may have due to the property's proximity to the Lee Metcalf Wildlife Refuge (Exhibit A-1). The Ravalli County Environmental Health Department has indicated that the subdivision meets the minimum standards required by law, but recommended that the lots be required to have Level 2 septic wastewater treatment due to the subdivision's proximity to the Refuge (Exhibit A-7, A-9, A-10). ~~To mitigate impacts on the natural environment, Condition 15 shall address the concerns of USFWS and EHD.~~

[Renumber findings 4 and 5 as 5 and 6, and insert the following:]

4. Section 76-3-504(g)(iii), MCA, prohibits local governments from establishing wastewater regulations that are more stringent than State standards, unless the more stringent local regulations meet the criteria described in Section 76-3-511, including peer-reviewed scientific studies. Because no scientific studies exist to prove that more stringent wastewater requirements are justified in this area, no additional mitigation can be required.

Commissioner Rokosch called for public comment. He noted this proposal has been reviewed under the old regulations and the new regulations are not being used (for the six criteria).

Nathan Lucke of Territorial Landworks stated he represented the Developer Ron Lords. He noted when the piping along the ditch was brought up, it was determined the applicant would provide the pipe to be installed along the property.

Ron Lords advised the Board he could answer any questions.

Commissioner Rokosch called for public comment in opposition to this subdivision.

Ann Marie Carbin stated that she lives across Moiese Lane. She stated her question is if there enough water to supply 33 wells. There are no meadows on or around Moiese Lane. It is very dry and dusty. She read the agreement with the community and there is no planning, or nothing in the future that indicates what they are doing will be beneficial in the future. She asked about their ability to meet the water supply requirement or a contribution of \$500 per lot, and if that means there is not enough water to put out fires or are they giving money to the Fire District because they don't have enough water supply. She is concerned about the septic running into Lee Metcalf Refuge, specifically the contamination of water with septic running into the irrigation ditch. There are 3 areas of water for the refuge that are already being redirected. She also noted even if the developer buries the pipe, with the continuous traffic and equipment DNRC uses why the level 2 waste water treatment isn't being addressed. She stated the lot owners will be accessing the subdivision on Moiese Lane which is a 19 foot wide gravel road that can't support the local traffic now. She stated this is a county road and she would like to know who is responsible for the maintenance. She also asked if the roads will be high quality with quick access by emergency vehicles.

Ann Marie also stated the subdivision will have almost 50 children and if the developer gave \$250 per lot, that one time offering is so negligible it is offensive. Public safety of the area is the responsibility of the Sheriff. She asked if there was enough staff on the Sheriff's Office to handle these needs. She also felt the park lands and recreational needs of the children are not being addressed. Her recommendation is to oppose this subdivision.

John Carbin stated he is one of 24 neighbors. He has written letters expressing his concerns regarding this subdivision to Planning and the Board of County Commissioners. Many of his neighbors could not be here because they have to work. One of his questions is if this subdivision is in the public interest. He also questioned if there is protection from the Sheriff's Department and other emergency services available to this location. He requested the Board of County Commissioners review these letters before making a decision.

Steve Whitson from the Lee Metcalf Wildlife Refuge stated there was an agreement at the Planning Board meeting that materials be provided by the developer in order to deliver adequate water. Originally the refuge asked the piping be extended to the head gate; however certain issues have been brought up, and the piping will now only extend along the property line. His concern is if the piping does not extend to the head gate. The increased residences will contaminate the water with irrigation runoff and waste water. Commissioner Chilcott asked Steve to point out his expectations of the piping as originally proposed. Steve pointed out the piping perimeter on the map.

Dave Schultz felt even with level two treatments, a study needed to be done for the 33 septic tanks, as this is a public safety issue.

Gayle Knox stated Ann Marie covered her concerns very well, but added her concern of school funding. The State indicates the cost per year per student is approximately \$7,000. This will not be covered with a donation to the schools of \$250 per lot. She stated they have enough trouble getting money for the schools now. She also feels the lack of water, contaminants and water quality will be a problem in the future. She also opposes going outside of the '1 per 2' zoning requirement.

Curtis Cook suggested this hearing is premature as the proposed development does not come within the zoning initiative. He stated this matter has not been settled yet and it is still in district court. And they do not know what regulations they are under for this subdivision. He added the Federal Court case was settled by agreement which gave the developers everything they wanted. The proposed would cover 8 subdivisions settlement under the new regulations. He stated there is no question the county has an emergency in zoning, and the people want comprehensive countywide zoning, but the Board lets the developers bypass the regulations, then the county definitely has an emergency. He stated it is time to slow down. He also noted the subdivision applications are identified by the government and are subject to the terms of conditions of Ravalli County subdivision regulations.

Pat Tucker stated this is why we need countywide zoning. She does believe the Commissioners should have attorneys look at this before making a decision. She doesn't see any public interest here today by moving forward with the subdivision. She does understand impact fees and further felt there is no public interest for this subdivision to move forward.

Jack Saunders stated it seems to him there is an emergency with the water availability and pollution. It's going to feed every pollutant drained into the refuge as they all know the problems with nitrogen pollutants from septic. He doesn't believe the suggested level two treatments are going to deal with the pharmaceuticals being pumped in. The problem is the drain field is piped directly into the refuge and eventually into the river. This will cause major problems. He too stressed this is an emergency.

Phyllis Bookbinder stated we are at a crossroads of the old style of development which brings to the table very little thought of the citizens. She stated the citizens are lucky there is a Wildlife Refuge in the middle of the valley. From her understanding the developer is not meeting four of the six criteria for approval. Currently the county has crowded schools and substandard roads. Under criteria #4 (effects on Natural Environment), we all know that water flows down hill and as we add more and more pollutants she asks where it will go. Phyllis felt noise pollution, water pollution, the impact on public safety and degradation of the wildlife refuge are all huge issues at hand with this subdivision. She advised the Commissioners they have heard the people here today and there is no reason to approve this subdivision. She felt they should be smarter and wiser about these conditions and the developer can only address two of the six conditions. She stated she is opposed to the subdivision.

Doug Soehren stated Phyllis was incorrect on the number of criteria in that there is only one. That criterion is the impact to agriculture. He stated this is a viable agricultural parcel. If the developer is allowed to construct 33 homes, it will have a negative impact on infrastructures. As for wildlife, he didn't see any provisions for wildlife on that land. Doug felt the big issue is if this subdivision is in the public interest. He is a member of the public and it is definitely not in his interest. It is in the interest of the landowners and their representatives. As for air quality, over and over again it was been stated the county will have a problem with air quality. He stated if the county does not take active measures on the air quality, the State DEQ will end up coming down on the county and then we will have no choices. He stated this subdivision violates the '1 for 2' initiative. He stated there is not enough money given to mitigate the impact of this subdivision. He felt the subdivision should be denied.

Lyle Pilon stated he doesn't fault these men (developers) for attempting to make a profit. Every individual has those personal rights, but those rights stop when you infringe upon some one else's. Lyle stated planning has stated the citizens must play an integral part in the planning process, and there are a few voices that he would like to represent; 8,102 of them to be exact, as they are the ones who voted for the interim zoning. He stated the county is in an emergency situation. While we can turn back the time on a document, the reality is that this is affecting us and the future of our children today. He stated as human beings, we leave a huge impact on this land. He is opposed to this subdivision and then closed his argument with a quote from Abraham Lincoln.

John Meakin asked the developers if this subdivision will be accessed by Eastside Highway. Ron Lords indicated it was. John indicated the local speed limit is 65 miles per hour and there is no turning lane to accommodate slowing down for cars that are turning into or from the subdivision. He also noted the subdivision is not fenced and this will allow children direct access to the Highway. He felt this is an extreme safety issue. He advised the Board this safety issue should be mitigated. He agrees with the water and septic issues brought forth today, because once the water supply is polluted, there is no going back. John stated the Board should reduce the number of lots. John also noted there has been discussion of the developer giving \$250 per lot in lieu of impact fees. He felt this amount should be raised due to the impact on the school districts. John questioned the area of road to be paved. Ron Lords replied a portion of Moiese Lane and all access roads will be paved. John recommended all access to this subdivision be paved including all of Moiese Lane. He stated this is poorly planned, is too dense and most parts of the subdivision are unsafe. He recommends the Board deny this project.

Bob Scott stated he concurs with citizens that are opposed to this subdivision. He has seen the results of too many subdivisions and their impacts on the community. He is fourth generation to the valley. From an aerial view, there is only one green parcel of land left in the valley and that is the refuge.

Pam Merwin stated she would like to point out we are at the top of the Rockies, the top of the water chain and it gathers and rolls down hill. For some people it is in their own back yard. She sees nothing positive about this subdivision. They have all heard the negative

impacts of this subdivision. She also indicated they have no way of knowing for sure how detrimental the effects the sewage could have on the refuge. While they are looking at the devastation, people could very well be dying because of infected water. She asked the Board not to assume any wrong meaning of the 1 for 2 initiative. She stated the voters knew exactly what they were voting for and doesn't require clarification from the Board. She stated she is opposed to this subdivision.

Marcia Bloom indicated between the impact on the refuge for possible septic discharge, the direct conflict of the 1 for 2 interim zoning, and the impact on the schools, she can't see any reason why the Board would approve this subdivision.

Gordon Maus stated they had all voted to take a year off and think about this subdivision. Gallatin Valley and Helena have just been through a similar decision and it is absurd. He stated one well for each household is not the answer. Pharmaceuticals have been discovered in local rivers and lakes and ponds. He doesn't see the logic of building 33 homes outside of the town. He recommends one central septic for these lots rather than one well per lot.

Stewart Brandborg, Bitterrooters for Planning stated he thinks this is a watershed decision and urges the Board to decide to deny based on the testimony heard today. He quoted Ghandi to the Board. He stated they place their faith in the Commissioners as their leaders.

Rachel Courteau stated the voters decided to stop this growth when they decided to get good plans for the county (i.e., the 1 for 2 initiative). Without good planning and interim zoning in place, she is opposed to this subdivision.

No more public comment was given. Commissioner Rokosch thanked the citizens for bringing their comments to the Board.

Nathan Lucke gave his rebuttal to the public comments. He stated the public is becoming much more educated as they discuss water and waste water. He indicated the process the developer is required to go through with DEQ will address those concerns as they have already been approved by DEQ. Ravalli County Sanitarian Morgan Farrell indicated it has been recommended for approval, but with amendments to the mixing zone regulations.

Nathan stated in regard to the non-degradation issue and the septic systems, there is nothing coming from the EPA on how to test for this possible water pollution. He stated there are other people already dumping in the water. The subdivision already has approval from MDOT for an approach permit on Eastside Highway. As for park land, he sees no reason why the park won't be enjoyed everyday as it is where he lives. He stated this proposal is for a 1.1 acre park which can be very enjoyable. In regard to density, he had the opportunity to attend several public hearings regarding the Aspen Springs subdivision and commented it would be a wonderful place to reside. There is another subdivision in Florence on Eight Mile Road just off of the Eastside Highway, and that too

is beautiful. He stated he has heard this park is not acceptable, but in other areas highlighted on the map there are no parks.

Nathan stated they have heard numerous members of the community today state their opposition but he would like to take a poll of the 33 proposed homeowners to see if they are in favor of this subdivision. In regard to the water contamination, it is his understanding the piping will be along the property and to the Northwest corner of the Property. They have agencies that comment on these subdivisions. The recommended approval was based on regulation and the developer is operating under those rules and regulations. He stated what they are hearing here today is people who don't want change. He stated change can not be avoided and the developer has addressed all of the required issues with the exception of park land.

A short recess was taken. Commissioner Rokosch asked the public if they had any rebuttals.

Pam Carlton indicated while she reviews the piping on the map it appears there is an additional quarter mile to the refuge. She stated that is not acceptable. She asked where the studies on this property are.

Nathan stated this process was started a very long time ago. The county planning department was not processing subdivisions in a timely manner and the developer made application long before the citizens approved the '1 per 2' initiative. He stated time is money and with all the delays it comes down to the costs of carrying this land.

Ron Lords stated he doesn't know how this subdivision became a 'political soap box'. This is a subdivision application. Six points of criteria have been mandated and each of these points has been met. The Planning Board and Planning Department have recommended approval with conditions. The litigation settlement agreement stated this application will be moved forward without bias and proceed fairly without delay.

Commissioner Rokosch closed public comment. Board deliberation began.

Commissioner Rokosch requested clarification on the ditch piping.

Steve Whitson replied there is a great deal of maintenance needed for these ditches. They need a backhoe and other equipment, plus if they burn the ditches they will need a plan to burn along with numerous fire personnel. In some areas they can not burn and attempting to utilize chemicals is difficult. They feel they have mitigated these issues with the use of pipes for the ditches. The developer has indicated he will supply the piping. The refuge does not always have funding to maintain the ditches so that is why the use of piping was offered.

Commissioner Rokosch asked if the proposed piping will be laid in the ditch or covered. Nathan replied ultimately it is up to the refuge since they are installing it. Steve replied it will be covered.

Commissioner Rokosch asked if notification will be sent out to the water users. Nathan replied the subdivision regulations require notification. He doesn't know if they have been informed as of date.

Civil Counsel Alex Beal stated the notification depends on how they set up the piping. If they provide pipe then no notification is required.

Commissioner Chilcott asked Steve if the piping is provided, would that mitigate the refuge concerns. Steve replied it would mitigate their concerns.

Commissioner Chilcott asked how long it would take to get the stamp of approval. Steve replied two to three months. Nathan stated the owner has confirmed that he will provide piping.

Commissioner Driscoll asked how long this land has gone without water rights. Nathan replied he doesn't believe this property ever had water rights.

Commissioner Rokosch asked if only downstream water users are notified. Karen Hughes replied it will be indicated on the final plat approval.

Commissioner Rokosch asked why the subdivision calls for level two treatment. Steve answered they did have a contaminant professional analyze this and it was recommended they should opt for level two treatment, but it was not required.

Commissioner Rokosch requested clarification from Theresa Blazicevich who was the previous Environmental Health Director. Theresa stated the minimum standards cover a typical situation and in certain circumstances recommendations from either the state or federal hydrologists might come into play. She also noted if the location is near a refuge, there should be greater setbacks, higher treatment and management of the systems by EPA standards.

Ron Lords stated he agreed with Theresa's recommendation having no problem providing a level two treatment.

Commissioner Rokosch asked if this caused a significant change to the proposal. Nathan stated there will still be individual systems but there will be a higher level of treatment. Theresa advised Ron almost all of level two treatments require maintenance. Commissioner Rokosch asked who would do the management. Ron Lords replied it would be up to the homeowners' to provide management.

Morgan Farrell requested the individual lots not be re-written. Ron Lords agreed.

Nathan stated there are companies that provide maintenance contracts to the homeowners on these types of systems.

Commissioner Rokosch asked Theresa to elaborate on her recommendations. Theresa replied eventually most places will belong to the water district. She also noted the Commissioners should address the countywide water district again.

Commissioner Rokosch asked if there are known treatment levels for pharmaceuticals. Theresa replied some public waste water treatments do take out pharmaceuticals but this area does not have that level of sophistication.

Commissioner Rokosch asked if there is any agricultural impacts and if the property is considered Ravalli County farmland. Shaun answered not at this time.

Commissioner Rokosch addressed the agricultural water impact. Commissioner Chilcott stated it will be piped from the head gate to the northern boundary of the proposed subdivision and this should bring more efficiency to the water delivery system. Brief discussion followed regarding labor costs.

Commissioner Rokosch asked about the effects on local services. Commissioner Grandstaff stated the developer has failed to mitigate the effects of local services such as police and emergency medical treatment.

Alex stated the Commissioners need to look at what has been received by the Board (in regard to knowing what the impacts are). He noted they find out what the impacts are by going to the people working for the agencies.

Commissioner Grandstaff asked how they would determine the effect on police protection. Nathan replied they did not receive any comment from the Sheriff, and further there has been hesitation on the Sheriff's behalf to define this mitigation.

Commissioner Driscoll asked for clarification on this issue. Alex stated in order to understand the impact they have to have something to base the effect it will have on police services or protection. He indicated the Sheriff should know the impact of those needed services. Commissioner Rokosch stated that type of information should be available. Karen noted they can not hold up the decision on a subdivision because they did not receive agency comment.

Commissioner Rokosch asked about the public road system, particularly subdivision traffic going east from the entrance way on Moiese Lane and how traffic will flow onto Eastside Highway.

Commissioner Chilcott added the subdivision regulations require the developer to bring it to the closest county road which would be Eastside Highway. Karen stated that is correct.

Brief discussion followed regarding school contributions regarding an offer of \$500 per lot for school districts.

Commissioner Thompson stated he recommends accepting cash in lieu instead of park land dedication. Ron replied the county will get both. 1.1 acres will be a park and the remainder of the requirement will be cash in lieu. Brief discussion followed regarding cash in lieu.

Minutes: Glenda Wiles now present.

Commissioner Thompson noted this area has seen several developments in the past ten years. In regard to park land, they would like to see a parcel in the northwest corner of this development, then as other developments occurs, the park areas could all 'hook' into the northwest corner for a larger park area. However the Developer did not want to do that, so if the Developer wants to give cash in lieu, he meets the regulation requirement. The Park Board was not appreciative of a long narrow piece so the cash in lieu made more sense to them.

In regard to criteria #4; Commissioner Rokosch asked if the 34 acres contained suitable park land. It was noted the developer asked to pay cash in lieu.

Commissioner Rokosch noted they addressed the ground water concerns, by addressing level one and level two treatments. Commissioner Chilcott asked for clarification of those concerns and how they were addressed. Commissioner Rokosch stated the applicant agreed to a level two treatment system which may provide adequate protection.

Commissioner Grandstaff addressed the weed management plan, stating it was meaningless and not adequate. She further relayed the lot owners will have one acre lots and they probably won't do mowing, apply herbicides, or reseeded as there is no enforcement. She asked how the Homeowners Association will enforce this weed management plan as Homeowners Associations are usually worthless and have no enforcement power.

Nathan noted this form is part of the Weed Department request. There is a new form now, and they were simply 'trying to be a step ahead of them' in their endeavor to address this requirement. Commissioner Grandstaff stated there are serious issues of ground water problems to the refuge, and impacts to law enforcement which have not been addressed properly, yet we have 'don't leave the bar-be-ques outside and worthless weed management plans, but they are unenforceable and meaningless. She stated the Developer is not addressing the serious problems such as the impacts on law enforcement services and ground water monitoring.

Commissioner Chilcott asked what Commissioner Grandstaff's proposal is. Commissioner Grandstaff stated she 'does not have a proposal, just a rant, because these are important issues and the developer is not addressing them as important impacts'. Instead what the county gets is 'an unenforceable weed management plan'. She stated she is not satisfied with that.

Environmental Health Director Lea Jordon addressed the air and water quality. She suggested they require fire places to meet EPA requirements for air quality. Commissioner Grandstaff noted if they can meet 75% efficiency, why not 90%? Karen noted this was a recommendation from previous Planning staff members, and most meet the 90% efficiency due to market availability.

Commissioner Grandstaff stated these issues point to the flaws of these boiler plate applications. Commissioner Chilcott added those requirements boil down to an enforcement issue. Commissioner Grandstaff replied that would be addressed with the sale of the house, and the point is, why have these things if they don't address the important issues of the impacts.

Commissioner Rokosch reiterated the need for a better environmental assessment.

In regard to criteria 5; Commissioner Rokosch addressed the ground water concerns in regard to wildlife. He noted in the environmental assessment under Section 1 discusses the water on and off site that might affect the proposed subdivision. He stated it is important to review the off site impacts, particularly in regard to off site surface water.

In regard to criteria 6; Commissioner Rokosch stated they have raised some issues in regard to ground water contamination and noted it falls into the DNRC for a community water system, as they recommend consideration for a community water system based on the number of wells, and proximity of the wells etc. Nathan stated they are not looking at this.

Commissioner Driscoll stated her concern is that this is impossible to mitigate at this point but it would be a lot healthier for the ground water. Nathan stated he does not disagree with that, but if they utilize a community system, then they should move to a denser development and denser developments are not well liked in this community. Therefore, that option is not on the table for discussion.

Commissioner Grandstaff made a motion to deny this proposal based on the developers' failure to address #1) loss of agricultural land; #2) loss of local services based on law enforcement; and #3) ground water contaminations.

Commissioner Driscoll seconded the motion. Discussion of the motion then occurred. Commissioner Chilcott asked what information they are basing the issue of ground water contamination. Commissioner Grandstaff replied it is the lack of information for the degradation to the wildlife refuge. Morgan stated they addressed the degradation in regard to the level two treatments that Ron has agreed to. Commissioner Grandstaff added (her motion) was also based on the lack of information on the number of wells. Commissioner Driscoll asked how they would know what is going on with the water issues if they do not have the information on the number of wells. She stated that could compromise this area in regard to water contamination.

Commissioner Chilcott stated DEQ recommended level one treatment would address the concerns and level two further addresses the water degradation concerns. Commissioner Chilcott stated this denial is an emotional response to the issues at hand and this issue is within the DEQ/DNRC purview. He stated they need to make a decision based on what they see in the law. He also added the Commissioners are in a quasi judicial role, and their decisions need to be based on the applicant following the law.

Commissioner Chilcott asked how the local governing body can review this ground water issue. Alex stated if DEQ is signing off on this, it limits the Board in any requirements they might want. He stated if the regulations require studies, then ok, but those requirements are not there. Alex advised the Board the statutes lay out how denial and or approval can be done and it must come under the regulations at the time of application. If there is a study done, the county has the ability to set higher regulations, 'if under the law the county has the ability to do it'. The county would have to back this up with peer review; i.e., science evidence, and if we don't have it, we default back to the state for their approval.

Commissioner Driscoll asked if criteria #3 is not part of the public interest when they make plat approval. Alex stated the public interest in the 6 criteria. For example, in the criteria of ground water, the state puts the county into a bind; in that the state claims water treatment and to be more stringent than the state, there has to be a clear reason and the county does not have that established. So the county would be out on a limb if it involved itself further into these requirements.

Commissioner Rokosch stated there are contaminants being treated within the DNRC measures. Testimony reflects that and the nutrients as well as the pharmaceuticals/viruses. He also asked if other impacts such as community water system should be within the motion, which would address the ground water and other users. Impacts on schools and impacts on the roads, such as Moiese Lane are also important.

Commissioner Chilcott asked Commissioner Grandstaff to define agricultural land. Commissioner Grandstaff replied land that does not have houses on it, as this parcel is clearly land that has pasture on it. Commissioner Chilcott stated they have heard from people who have been here for a long time this land is not agricultural. He stated while it might be some pasture land, 6" down it is probably rock which does not lend it self to agricultural practices. Agricultural land is defined as a business, and he is not sure this is agricultural land just because it is open land. He agrees agricultural land is an important legacy, but he is not sure just because it does not have a house on it. it is agricultural land.

Commissioner Driscoll stated we need to look at the overall view of the valley as they (development) are eating up every little piece, and just because it does not have water on it, does not mean it is not agricultural land. A good example of agricultural land with not water is eastern Montana. She stated there are different degrees of agricultural land.

Commissioner Thompson stated this is 33 acres and it is not dry land farming. Commissioner Driscoll stated agricultural lands are precious and while they might be dry

land now, we need to include this in our overall view. Commissioner Driscoll asked if the developer received any agricultural land reduction. Ron Lords stated he did not.

Commissioner Chilcott stated as far as the law enforcement issue, the Board does not have any data to support this issue. The Sheriff does a great job with the resources he has, but he does not have enough resources, nor does the Road or Weed Department. However, the departments state they are being impacted but they can not say how much.

Commissioner Driscoll stated at some point someone has to take responsibility to look at the whole picture, which includes seeing what the impacts are to the department budgets. She noted this is a larger subdivision than the last two that were approved.

Commissioner Grandstaff added 'on the flip side to this issue' we are being told we have to approve these as the road and law enforcement can not prove they are being stretched thin. She stated that does not make sense. Commissioner Chilcott agreed the Commissioners need that type of data. Commissioner Rokosch stated in the absence of utilizing the county wide approach; if the interpretation is to identify the effects and impacts, which in turn would allow them to offer mitigation, the Board is certainly not receiving information for law enforcement or the Road Department from the developer.

Commissioner Chilcott stated he grew up around this refuge and they need to identify the boundaries. He stated if they continue to float these boundaries, the county will end up in court. Commissioner Rokosch indicated he should refer to section 1 of the environmental assessment as it discusses on site and off site. He stated the off site considerations are germane to this discussion and subdivision. Commissioner Chilcott stated they are germane if you can review those boundaries.

Alex stated the developer needs an opportunity to mitigate the negative effects
Commissioner Grandstaff raised.

Ron asked what the negative effects are. He stated this is not agricultural land. He does not receive any discount on his taxes for agricultural land.

Commissioner Rokosch addressed the effects of local services (roads and police protection and schools) in regard to a contribution. Ron stated he will give an additional 250.00 per lot to the Sheriff. He stated he is willing to work with the Board, but he does not know what the Board wants. He asked the Board to give him options so he can look at them. Commissioner Rokosch stated the identification of the impacts within the environmental assessment were not adequately identified. Ron stated the Sheriff has not responded. He asked what the Board wants him to mitigate if the Sheriff will not respond. Commissioner Rokosch stated they can look at the data for response. Nathan asked what that would provide. Commissioner Rokosch stated that can show coverage, travel etc. of law enforcement personnel.

Commissioner Grandstaff stated Ron might need to visit with the Sheriff in order to determine the impacts and how to mitigate them.

Commissioner Driscoll stated the Commissioners need to be accountable and represent all of the community, not just the developers.

Ron stated 'all the sudden the Board thinks there will be 32 houses, and in reality this might take 30 years to build that many houses on'. He stated this property is for his children and other children, so they have a place to go. Commissioner Driscoll stated it could build out very quickly. Ron asked how affordable the housing will be if this discussion continues in regard to fees. With additional fees, and no direction, he asked how people will afford a place to live. Nathan noted the developer is spending all of the money with no return. Ron stated the Board is asking for things that will impact the economy and affordability of this development. Commissioner Driscoll stated look at The Arbors Subdivision, as it built out, it is not affordable housing.

Commissioner Chilcott asked staff if there are an estimated number of residents per household. Shaun stated 2.3 to 2.4 people per household. Commissioner Chilcott took some cursory figures of the budget from last year, divided it by 40,000 residents, calculated in the number of people per household and indicated the impact could be calculated at \$114 per lot. Therefore the offer of \$250 per lot for law enforcement services is well over that cursory calculation.

Ron stated they are offering level two treatments which have now come about by this meeting. Commissioner Rokosch stated this was addressed earlier and a system wide treatment would be better. Nathan stated the issue is to mitigate the law enforcement services at \$250.00 per lot plus they are offering level two treatments, and they will provide the pipe from the head gate. Ron stated the paving requirement alone is hundreds of thousands of dollars. Nathan stated he is 'drawing a blank on additional concerns'. Commissioner Rokosch stated the community water system is the major cause of concern for him.

Commissioner Chilcott asked if the community water system is a community well. Ron asked if that change were to come about, would he have to resubmit his subdivision proposal. Karen stated he would need to submit plans for the engineered system.

Commissioner Grandstaff stated there is nothing about this subdivision she likes, there is no open space, no park land and it is out of character for the area. Ron stated there are two commercial businesses in the area and 32 homes on 33 acres.

Nathan stated this is not great planning, but it is how the Developer responded to the regulations the county has in place. He stated they applied the density model, and some members of the public were dissatisfied. So, we reacted to that dissatisfaction and they came back with this plan. He stated the Eight Mile area has one home on one acre and it is only a few miles away from this location. At this point, the Developer has addressed all concerns with the exception of the community system. Commissioner Driscoll asked why they did not want to do a community system. Nathan stated they would have to resubmit. Ron stated if a community well versus individual wells were required, then he

would resubmit it that way. Commissioner Rokosch stated the level two treatment system has been addressed as being more adequate, so that too would need to be addressed with the community water system. Nathan stated if they approach the agencies again, would that suffice, and if not, how do they have a guide to see what is credible and what is not. Commissioner Rokosch stated the agencies are not the sole source. Nathan asked the Board again what guidelines they want the Developer to follow.

Commissioner Grandstaff made a motion to withdraw her motion. Commissioner Driscoll seconded the motion. The motion to deny was withdrawn.

Commissioner Driscoll asked how a community water system is done. Morgan Farrell replied this would allow for community testing so they would always know what is going on with the water. Theresa Blazicevich stated the water system would not be a concern to Lee Metcalf; rather it would be the waste water. She stated a community well could pull things into the aquifer faster, but there is a way to test it.

Ron stated the current water rights make it impossible to obtain a community well. Commissioner Rokosch stated there might be some difficulties but it is not impossible. Commissioner Rokosch stated the regulations allow an extension if the applicant wants to amend the application.

Discussion about the settlement agreement deadline took place. Ron stated they have met every statutory requirement for this subdivision, going well beyond the requirements by addressing mitigation for other adverse effects. He stated they would like a vote by the Board.

Nathan stated his interpretation of what Theresa said is that a level two treatment system is being done even though level one would be fine, and 33 wells would be sufficient. Ron stated this is no different from a subdivision that has 20 houses on it.

Commissioner Chilcott made a motion that Moiese Meadows Subdivision be approved based on findings of fact and conclusions of law in the staff report, and subject to the conditions in the staff report (as amended by the Planning Board, and as amended here today as follows:

- the level two treatment system with a memo detailed in the covenants;
- condition #13 piping from supply ditch head gate to north property line;
- cash in lieu for park;
- \$250 per lot given on first conveyance to the Sheriff's Office;
- \$500.00 per lot given to the Stevensville School District first conveyance.
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Commissioner Thompson seconded the motion. Discussion of the motion then took place. Commissioner Rokosch stated part of the issues were not resolved which includes the community water system and whether the mitigations are suitable for impacts of the subdivision. Commissioner Chilcott stated 'last he heard the DNRC are not a regulatory agency and not water experts', rather DEQ is the experts'. There was some discussion about the community water. Commissioner Rokosch noted community water relieves

pressure from the general public and if they do not look at that possibility, they are not looking at the public interest. Ron stated the Board has no legal grounds to deny this subdivision.

Commissioner Thompson and Commissioner Chilcott voted in favor of the motion to approve the subdivision. Commissioner Grandstaff, Commissioner Driscoll and Commissioner Rokosch voted against the motion to approve the subdivision. The motion to approve the subdivision was defeated.

Ron stated he would like a week continuance. The Board asked how that request shakes out with litigation deadlines. Karen stated the applicant can request this continuance as it is outside of Planning's control. She stated with his request this subdivision can be continued past the July 9th deadline.

Commissioner Chilcott made a motion to grant the applicant's request of extension to July 9th at 11:00 a.m., and withdrew the motion due to calendar issues.

Commissioner Chilcott made a motion to grant the applicant's request for continuance on July 19th at 9:00 a.m. Commissioner Thompson seconded the motion. All voted "aye."

In other business, the Board met with Kellieann Morris of the Weed Department in regard to the issue of Blue Weed infestation at the Darby Pit. Due to the late hour, (5:45 p.m.) the discussion included moving this meeting until Friday. Kelly did indicate she was advised by the Weed Supervisor Bryce Christiaens, the Darby Pit was to be closed for several years due to this infestation. However, the Road Department has now oiled the road inside the pit and they have transported some equipment inside the pit area. The neighbors are now finding Blue Weed on their properties. She stated this is an important issue to address as the weed is currently flowering. Kellieann brought some seeds in for the Board to look at. She stated there is no reason for Road Department personnel to be going in and out of the pit. After a brief discussion, Commissioner Chilcott stated he is not sensing any hesitation by the other Board Members to close this pit. He then made a motion to close the pit until further notice, allowing only Weed District personnel access to this pit, or other personnel as approved by the Weed District. Commissioner Grandstaff seconded the motion and all voted "aye".

(The plaintiffs alleged that the county missed statutory deadlines reviewing their subdivision applications, and so harmed their interests. They sought damages - both compensatory and punitive - plus attorney fees. Under the agreement, the clock will be set back for 11 developers, which must comply with subdivision rules in effect before last November, when voters passed the interim zoning measure in an effort to spur countywide zoning.) Ravalli Republic, June 5, 2007

Commissioners, please deny or delay this development. Protecting the interests of an individual developer should not be more important to you than protecting the interests of the Ravalli County voters, the present and future residents of the area under discussion, and the Metcalf Wildlife Refuge.

At this time, the area in question is not zoned. In fact, one of the septic permits requested for within the development is for commercial use. No development should occur until the types of development appropriate for this area are clearly spelled out. The effects of what we do there now will be realized in the immediate future and nothing in the proposal looks to that future.

Even if the development is limited to residential structures, the density and location of these structures will negatively impact the health, safety and welfare of the adjoining property owners, and, of the Metcalf Wildlife Refuge located between the proposed development and the Bitterroot River toward which all water flows.

Is there enough water to supply 33 wells, some of which are to be less than 40 feet apart? DNRC recommended a community water system. Has that been considered? The planning board recommended that future owners must agree not to protest the creation of an improvement district to create or improve a community water or wastewater treatment system. This implies that improvement of these systems will be necessary. Whose responsibility will it be to see that the improvements occur? Unless this is spelled out, development should be at least delayed.

The planning board also recommended that the developer have an option of either meeting the water supply requirements for the Three-Mile Fire District, or, of making a 500-dollar per lot contribution to the Fire District. Does that mean there will not be enough water at sufficient pressure on the various lots to put out fires? It is inevitable that conflicts will arise over the water supply.

33 units, including homes and possible commercial structures, will create significant waste, much of it carried in water, which will flow or leach in the direction of the Bitterroot River. In doing so, it will pass through the Metcalfe Wildlife Refuge. It is painful to think of the refuge becoming a leach field for 33 septic tanks and the destination for the runoff from 33

chemically treated lawns. Water from the supply ditch for the refuge passes through an irrigation ditch that runs along and through the property. The developer has agreed to pipe the irrigation ditch within the subdivision, but those parts of the ditch adjacent to the development will risk contamination of the irrigation water and degradation of the ditch banks.

The ditch is already very fragile; parts of it have been piped and buried at the east end of Moiese Lane to allow for some small development that is occurring there. There are already three areas where water for the refuge is being diverted from the conduits, flowing down the road, or into fallow fields because of human impact, and there are only 3 or four residences in that vicinity. Imagine the impact of 33 households on that system. The developer will have to bury the pipe at the entrance from Moiese Lane to the subdivision. The continuous construction traffic and settling of the road over the buried pipe will damage it. That has occurred to the east where the pipe was buried under the entry road to another, much smaller planned development.

DNRC recommended a higher-level wastewater treatment system, (level 2), than is usually required, because of the subdivision's proximity to the Refuge. Requiring a higher-level wastewater system for this subdivision is more stringent than what the State requires. State law also requires "peer-reviewed scientific studies" to justify these more stringent requirements. What studies have been reviewed in this regard? My concern is not that the level 2 wastewater treatment system requirement is too stringent, but that it is not stringent enough. The wastewater treatment system proposed seems inadequate to protect the refuge and adjoining properties.

Residents of the proposed subdivision will access their homes via Moiese Lane, a 19-foot-wide gravel road that even now cannot support the local traffic. It is described in the application as a "sub-standard, county-maintained road." The subdivision proposal commits to improving the road from the highway to the entrance to the subdivision, a rather insignificant 100 yards or so, but does not specify the nature of the improvement. If the road improvement constitutes throwing a little crushed rock or gravel into the potholes and grading it, such improvement will be very short-lived.

There is no commitment in the proposal about maintaining the roads within the proposed subdivision, no requirement that the homeowners do so, nor any promise that the county will do so. Again, the planning board recommends that the residents agree not to protest the establishment of

a road maintenance district, but there is no requirement that one be set up, and no one has the responsibility for maintaining those roads. Grizzly Way is a nearby road for which no one is responsible. It is potholed and rutted and at times impassable.

Although there will be "no parking" signs on the roads, if they are not high-quality, well-maintained streets, how can emergency vehicles quickly and safely access the homes?

If the subdivision's 33 units house families, at an average of 1.5 children per unit, almost 50 children can be expected to swell the attendance at local schools. The developer has offered \$250 per unit to mitigate the impact on the schools. That is a little over \$160 per child. According to the Montana Office of Public Instruction, the annual expenditure for schooling a child is \$7,080. The amount offered by the developer is so negligible as to be offensive. Unless the developer can offer much more than \$160 per child to the schools, his or her request should be denied.

Public safety in the area is the responsibility of the county sheriff. Is the sheriff's office adequately staffed to protect the safety and well-being of this many new residents? The developer claims that the impact on police protection will not be significant but offers no basis for that assumption. And he/she offers no mitigation.

The developer's offer to sandwich a park between the road and an irrigation ditch was considered useless by the county planning board. The board requested cash in lieu of parkland. However, once the cash is in the Ravalli County Park Board's coffers, there is little likelihood that it will provide a park for the children in the proposed subdivision. So, the recreational needs of the children living in this development are not really being considered.

Commissioners, please deny or delay this development. Protecting the interests of an individual developer should not be more important to you than protecting the interests of the Ravalli County voters, the present and future residents of the area under discussion, and the Metcalf Wildlife Refuge.